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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN THE MATTER OF THE TAX
INDENTEDNESS OF:

Douglas Sparby
2233 Highway 58 Blvd.
Red Wing, MN 55066

No. 18-MJ-892 TNL

APPLICATION OF THE UNITED STATES
TO ENTER PREMISES TO EFFECT LEVY

The United States of America, on the basis of the attached affidavit of Revenue Officer Jason Trotter, respectfully applies to the Court, pursuant to 26 U.S.C. sections 6331 and 7402(a), for an order authorizing Revenue Officer Jason Trotter and/or other employees, as designated by the Internal Revenue Service, who may be escorted by employees of the U.S. Treasury Inspector General for Tax Administration, to enter the garage at the premises located at 2233 Highway 58 Blvd., Red Wing, MN 55066, for the purpose of seizing the property of Douglas Sparby as may be found therein, which is subject to levy by the United States in satisfaction of the outstanding federal taxes now due and owing by Douglas Sparby together with interest and costs as allowed by law.

Jurisdiction is conferred upon federal district courts to make and issue in civil actions, writs and orders of injunction and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. 26 U.S.C. § 7402(a). A district court is vested with jurisdiction under 26 U.S.C. § 7402(a) to enforce levies of the Internal Revenue Service by summary, ex parte

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proceedings. *Matter of Carlson*, 580 F.2d 1365 (10th Cir. 1978); *United States v. First National City Bank*, 568 F.2d 853 (2d Cir. 1977); *United States v. Mellon Bank, N.A.*, 521 F.2d 708 (3d Cir. 1975)

Where a taxpayer refuses to pay his tax liabilities after notice and demand, a District Court has jurisdiction to issue an entry order pursuant to 26 U.S.C. § 7402(a) allowing other Service to enter premises in order to collect delinquent taxes. 26 U.S.C. § 7402(a); *Marshall v. Barlow's Inc.*, 436 U.S. 307, 322, n. 19, 98 S.Ct. 1816 (1978). An order of entry is to be issued upon application with supporting affidavit showing cause to enter, search for, and levy upon personal property in aid of summary collection of assessed and unpaid tax. *United States v. Shriver*, 645 F.2d 221 (4th Cir. 1981). Issuance of the order authorizing entry is to take place in a summary, *ex parte*, proceeding and is not to be converted into an adversary proceeding. *Matter of Campbell*, 761 F.2d 1181, 1186 (6th Cir. 1978); *United States v. Condo*, 782 F.2d 1502, 1504-06 (9th Cir. 1986); *United States v. Asay, Jr.*, 614 F.2d 655, 662 (9th Cir. 1980).

Submitted in support of this application is the affidavit of Revenue Officer Jason Trotter. The affidavit establishes that assessments of tax, penalty, and interest have been made against Douglas Sparby for the 1040 tax period ending 12/31/2005 in the amount of \$71,482.75. Pursuant to sections 6201, 6203, and 6303 of the Internal Revenue Code, notice and demand were made for the assessments was given to the taxpayer prior to or on the date that is 60 days after the date upon which the amount was assessed. Douglas Sparby has neglected or refused to pay the full amount of the tax, penalty, and interest assessed within ten (10) days after notice and demand for payment, and this neglect or refusal

continues. By reason of the taxpayer's neglect and failure to pay such tax, penalty, and interest within 10 days after notice and demand, a levy may be made under 26 U.S.C. 6331(d). There is now due and owing and unpaid with respect to such tax, penalty and interest, a total amount of \$71,482.75 (computed through October 15, 2018). These amounts include statutory additions. By reason of the assessments, a lien has arisen on all property and rights to property of Douglas Sparby, as prescribed by sections 6321 and 6322 of the Internal Revenue Code.

A notice of intention to levy along with Collection Due Process rights, required by section 6331(d) and 6330 of the Internal Revenue Code, was provided to the taxpayer by certified mail to the taxpayer's last known address on 01/31/2011 for the Form 1040 liability for the period ending 12/31/2005. The taxpayer did not exercise his Collection Due Process rights on the tax period.

Notice of Federal Tax Lien was filed with Goodhue County, Minnesota on 09/13/2013 for the Form 1040 liability for the period ended 12/31/2005.

Taxpayer is an individual. Enforcement actions have been taken to resolve account including levies, summons, and seizures. There is currently a wage levy in place on the taxpayer, but the amounts received will not full pay the liability within the collection statute of limitation. The liability remains unpaid. A levy on unimproved property has been made for other liabilities that are jointly owed by taxpayer and his wife.

The asset located within the premises that is the subject of seizure is a 2013 Ford XLT Super Crew, VIN No. 1FTFW1ET7DKF47813, which is free and clear of any encumbrances, and is located in the taxpayer's garage at 2233 Highway 58 Blvd., Red

Wing, MN 55066.

The IRS has verified ownership of the above-listed property from Revenue Officer Trotter conducting a field visit to view the asset and meet with the taxpayer on 08/21/2018. Revenue Officer Trotter contacted taxpayer by phone and told him he would be happy to meet him at his house after work, and asked him if he would give Trotter consent to enter the garage to conduct seizure on the vehicle. The taxpayer stated he would not give consent. Taxpayer to confirm that the vehicle is stored in the garage located at 2233 Highway 58 Blvd., Red Wing, MN, 55066. The taxpayer confirmed that it is stored there.

Seizure is the only remaining viable solution to collect the amounts owed to the United States. Taxpayer has requested an offer in compromise (OIC) and (IA), but refused to increase his offer to include all equity and future income and refused to pay from available assets, so he is not eligible for those OIC or IA. In addition, the amounts received through levies are not sufficient to full pay the liability. Thus, there are no collection alternatives available that would pay this liability.

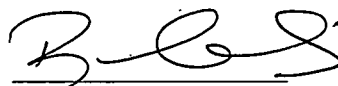
On August 21, 2018 IRS Revenue Officer Jason Trotter requested permission to enter the premises for the purpose of levying property under section 6331 of the Code, and was verbally denied consent to enter by Douglas Sparby. As a result, the IRS has not been able to secure Douglas Sparby's consent to enter in order to seize property for the purpose of satisfying his outstanding tax liabilities.

WHEREFORE, the United States prays that an order be issued permitting Revenue Officer Jason Trotter and/or other employees, as designated by the Internal Revenue Service, who may be escorted by employees of the U.S. Treasury Inspector General for Tax Administration, to enter the garage at the premises located at 2233 Highway 58 Blvd., Red Wing, MN, 55066, for the purpose of seizing property of Douglas Sparby, as may be found therein for the purpose of satisfying Douglas Sparby's outstanding tax liabilities.

Dated: October 25, 2018

ERICA H. MacDONALD
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By:



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